

EGS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND NECHETSKY

*Plaintiff*

v.

PRECISION SHOOTING EQUIPMENT, INC.

*Defendant.*

CIVIL ACTION NO.

19 926  
FILED

MAR 04 2019

JURY TRIAL DEMANDED

KATE HARRISMAN, Clerk  
Dep. Clerk

CIVIL ACTION COMPLAINT

**I. PRELIMINARY STATEMENT**

1. This is a claim against Defendant, Precision Shooting Equipment, Inc., for personal injuries caused to Plaintiff, Raymond Nechetsky, by the negligent acts and/or omissions of the Defendant and its agents, servants, employees, workmen and/or representatives.

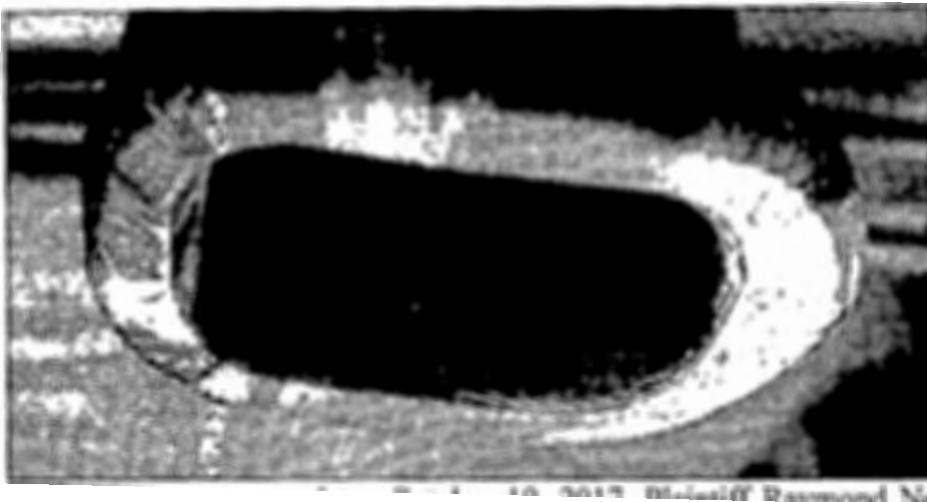
**II. PARTIES**

2. Plaintiff, Raymond Nechetsky is an adult individual and citizen of the Commonwealth of Pennsylvania, residing therein at 6166 Indian Creek Road, Zionsville, PA 18092.

3. Defendant, Precision Shooting Equipment, Inc., was and is now a business entity, believed to be a corporation engaged in the design, manufacture, and sale of archery equipment with a principal place of business located at 2727 North Fairview Avenue, Tucson, AZ 85705. Precision Shooting Equipment, Inc. regularly and continuously conducts business in the Eastern District of Pennsylvania.

4. At all times material hereto, the Defendant acted by and through its employees, agents, servants, and/or workmen, who were, in turn, acting within the course and scope of their employment, agency, and/or service for same.

5. Defendant Precision Shooting Equipment, Inc. designed, marketed, sold, supplied and/or distributed the subject Crossbow (model number 01246IF, serial number 2384120) and its component parts.



6. On or about October 19, 2017, Plaintiff Raymond Lechetsky was carrying the subject Crossbow in his yard located at 6166 Indian Creek Road, Zionsville, PA 18092, when suddenly and without warning—and as a direct result of the defective condition of the subject Crossbow, as described below—the crossbow prematurely fired, thereby causing the Plaintiff to suffer severe and permanent bodily injuries including, but not limited to, a fractured right thumb which required surgical repair.

7. Upon information and belief, on or about August 28, 2017 and on or about November 16, 2017, Defendant Precision Shooting Equipment, Inc., issued a product recall on its 2017 Fang XT, 2017 Fang LT, and 2017 Thrive Crossbows, because the trigger mechanism on these crossbows had been found to be out-of-specification, potentially leading to premature

misfiring or accidental discharge. The above referenced product recall has been incorporated as Exhibit "A" for reference.

### **III. JURISDICTION AND VENUE**

8. Jurisdiction is conferred upon this Court by virtue of the parties' diversity of citizenship pursuant to 28 U.S.C. § 1332.

9. The amount in controversy in this action is in excess of seventy-five thousand (\$75,000.00) dollars, exclusive of costs and fees.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the act and/or omissions giving rise to the within claims occurred within the district.

### **COUNT I RAYMOND NECHETSKY v. PRECISION SHOOTING EQUIPMENT, INC. STRICT LIABILITY**

11. Plaintiff hereby incorporates paragraphs one (1) through ten (10) of the within Complaint as though the same were fully set forth at length herein.

12. Defendant, Precision Shooting Equipment, Inc. placed into the stream of commerce a defective product, as identified above, that violated the standards created in *Tincher v. Omega Flex*, 104 A.3d 399 (Pa. 2014). More specifically, the Defendant placed into the stream of commerce a defective product wherein (a) the danger was unknowable and unacceptable to the average or ordinary consumer and/or (b) a reasonable person would conclude that the probability and seriousness of harm caused by the Defendant's defective product outweighs the burden or costs of taking precautions.

13. The accident described herein was caused solely and exclusively by Defendant's defective design and/or manufacture of the aforesaid Crossbow and its component parts, including, but not limited to:

- a. Distributing/selling the subject Crossbow with a defective firing mechanism;

- b. Failing to design and/or manufacture the subject Crossbow and its component parts to include an effective firing mechanism to prevent premature firing of the crossbow;
- c. Failing to reasonably foresee that subsequent alterations would be made to the aforesaid Crossbow; more specifically that subsequent alterations would be made to the aforesaid ineffective firing mechanism, rendering the Crossbow unreasonably unsafe to users;
- d. Failing to include in the plans, designs, and specifications for the subject Crossbow industry-recognized safety specifications;
- e. Failing to design and/or manufacture the subject Crossbow and its component parts to include an effective and durable firing mechanism;
- f. Failing to design and/or manufacture the subject Crossbow and its component parts such that it would not be prone to misfiring;
- g. Failing to exercise the requisite degree of care and caution in design distribution, manufacture, packaging, labeling, assembling, design, supply and sale of the aforesaid Crossbow and its component parts;
- h. Failing to insure that the subject Crossbow and its component parts could be used in a manner which would not cause a danger to potential third parties, such as the Plaintiff;
- i. Failing to warn of the dangers of the aforesaid Crossbow;
- j. Failing to provide proper safety and operational instructions to end users.

14. The accident described herein was due in no manner to negligence on the part of the Plaintiff.

15. At all times relevant hereto, Defendant's aforesaid Crossbow and its component parts were defective and unsafe for consumer use.

16. At all times relevant hereto, there were latent defects in the Defendant's aforesaid Crossbow and its component parts such that the product's defective condition was unknown to the consumer, therefore rendering the product unacceptable for consumer use.

17. The Defendant distributed and sold the aforesaid Crossbow and its component parts in a defective condition in violation of the Restatement (Second) of Torts §402(A), and those defects were the sole and proximate cause of the Plaintiff's injuries.

18. Defendant is strictly liable to Plaintiff as a result of the defective condition of Defendant's product.

19. As a result of the aforesaid strict liability of Defendant, Plaintiff Raymond Nechetsky, has suffered a right thumb fracture which required surgery. Plaintiff has been and will be obliged to receive and undergo medical attention and care and to expend various sums for the treatment of his injuries and incur such expenditures for an indefinite time in the future.

20. As a further result of the aforesaid accident, Plaintiff Raymond Nechetsky may in the future suffer a loss of his earnings and/or earning power, and he may incur such loss for an indefinite period in the future.

21. Further, by reason of the aforesaid occurrence, Plaintiff has and/or may hereinafter incur other financial expenses all in an effort to treat and cure himself of the injuries sustained in the aforesaid accident.

22. As a further result of the aforesaid strict liability of Defendant, Plaintiff Raymond Nechetsky has or may have suffered injuries resulting in the serious and/or permanent loss of use



of a bodily function, dismemberment, and/or scarring, which may be in full or part cosmetic disfigurements which are or may be permanent, irreparable and severe.

23. As a further result of the aforesaid accident, Plaintiff Raymond Nechetsky has suffered a loss of the enjoyment of his usual duties, avocations, life's pleasures and activities, and the shortening of his life expectancy, all to his great detriment and loss.

24. As a further result of the aforesaid accident, Plaintiff Raymond Nechetsky has suffered great and unremitting physical pain, suffering and mental anguish, all of which may continue in the future.

WHEREFORE, Plaintiff, Raymond Nechetsky, demands judgment in his favor and against Defendant, Precision Shooting Equipment, Inc., in an amount in excess of One Hundred Fifty Thousand (\$150,000.00), together with costs of suit, interest and any such other relief as the Court deems adequate, just and proper.

**COUNT II**  
**RAYMOND NECHETSKY v. PRECISION SHOOTING EQUIPMENT, INC.**  
**NEGLIGENCE**

25. Plaintiff hereby incorporates paragraphs one (1) through twenty-four (24) of the within Complaint as though the same were fully set forth at length herein.

26. At all times material hereto, Defendant owed a duty to end users of its product, such as the Plaintiff, to exercise reasonable care in designing and manufacturing the aforesaid Crossbow, and to sell/distribute that product in a reasonably safe condition.

27. The Defendant was negligent in designing, manufacturing, assembling, marketing, installing, and distributing the defectively designed and manufactured Crossbow, in general, and in the following particulars:

- a. Distributing/selling the subject Crossbow with a defective firing mechanism;

- b. Failing to design and/or manufacture the subject Crossbow and its component parts to include an effective and durable firing mechanism to prevent premature misfiring of the aforesaid Crossbow;
- c. Failing to reasonably foresee that subsequent alterations would be made to the aforesaid Crossbow; more specifically that subsequent alterations would be made to the aforesaid ineffective firing mechanism, rendering the Crossbow unreasonably unsafe to users;
- d. Failing to include in the plans, designs, and specifications for the subject Crossbow industry-recognized safety specifications, including an effective firing mechanism;
- e. Failing to design and/or manufacture the subject Crossbow and its component parts to include an effective and durable firing mechanism;
- f. Failing to design and/or manufacture the subject Crossbow and its component parts such that it would not be prone to misfiring prematurely;
- g. Failing to exercise the requisite degree of care and caution in distribution, manufacture, packaging, labeling, assembling, design, supply and sale of the aforesaid Crossbow and its component parts;
- h. Failing to insure that the subject Crossbow and its component parts could be used in a manner which would not cause a danger to potential third parties, such as the Plaintiff;
- i. Failing to warn of the dangers of the aforesaid Crossbow;
- j. Failing to provide proper safety and operational instructions to end users;

k. Such other acts and/or omissions constituting negligence as may be learned through discovery proceedings or demonstrated by the evidence adduced at trial.

28. The aforesaid negligence was the sole and proximate cause of Plaintiff's injuries, which were due in no manner to negligence on the part of the Plaintiff.

29. As a result of the aforementioned negligence, the Plaintiff suffered the injuries described in paragraphs nineteen (19) through twenty-four (24) herein which are incorporated by reference as though fully set forth at length.

WHEREFORE, Plaintiff, Raymond Nechetsky, demands judgment in his favor and against Defendant, Precision Shooting Equipment, Inc., in an amount in excess of One Hundred Fifty Thousand (\$150,000.00), together with costs of suit, interest and any such other relief as the Court deems adequate, just and proper.

**COUNT III**  
**RAYMOND NECHETSKY v. PRECISION SHOOTING EQUIPMENT, INC.**  
**BREACH OF WARRANTY**

30. Plaintiff hereby incorporates paragraphs one (1) through twenty-nine (29) of the within Complaint as though the same were fully set forth at length herein.

31. As a result of the foregoing, Defendant is liable to the Plaintiff for the breach of express and/or implied warranties that the aforesaid Crossbow was merchantable, fit for use, and suitable and fit for its particular purpose under common law and 13 Pa. Cons. Stat. §§ 2314 and 2315.

32. As a result of the aforementioned breach, the Plaintiff suffered the injuries described in paragraphs nineteen (19) through twenty-four (24) herein which are incorporated by reference as though fully set forth at length.



WHEREFORE, Plaintiff, Raymond Nechetsky, demands judgment in his favor and against Defendant, Precision Shooting Equipment, Inc., in an amount in excess of One Hundred Fifty Thousand (\$150,000.00), together with costs of suit, interest and any such other relief as the Court deems adequate, just and proper.

Respectfully,

**SWARTZ CULLETON PC**

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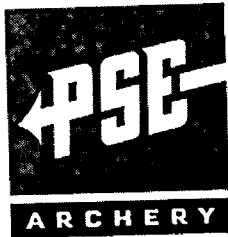
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*Attorneys for Plaintiff,*

Raymond Nechetsky

Date: February 27, 2019

# Exhibit “A”



BOWS



ARROWS

PSE GEAR

PSE ELITE PRO STAFF

DEALER LOCATOR

NEWS



PSE ARCHERY SCHOOLS

PRODUCT SUPPORT

MEDIA

COMPANY



# 2017 PSE Fang/Thrive Crossbow Recall

PRECISION SHOOTING EQUIPMENT, INC. ANNOUNCED AUG 28TH, 2017 THAT IT WILL CONDUCT A PRODUCT RECALL ON ITS 2017 FANG XT, 2017 FANG LT AND 2017 THRIVE CROSSBOWS.

Hazard: The recall is being initiated because the trigger mechanisms on these crossbows have been found to be out-of-specification, potentially leading to a premature firing or accidental discharge.

Recalled Product: PSE FANG XT, PSE FANG LT, and PSE THRIVE  
(Shipped: October 1, 2016 – August 25, 2017) SERIAL#: 2404285-2514039

Model numbers/UPC of the affected models are as follows:  
01295CY/042958564869, 01295S2/042958574585, 01303CY/042958566924,  
01303MG/042958566931, 01303S2/ 042958575797, and 01312CY/042958575322

Remedy: PSE is asking customers to immediately stop the use of their 2017 Fang XT, Fang LT or Thrive crossbows, and to contact PSE for information regarding the return and repair of these items.

Please fill out the Return Authorization Form found below. DO NOT send your crossbow back to PSE without first obtaining a Return Authorization Number. If you are having trouble with the online form, please contact PSE at 800-477-7789 or by emailing PSE at [fangthrive2017recall@pse-archery.com](mailto:fangthrive2017recall@pse-archery.com)

## 2017 Crossbow Recall Form

Name \*

First

Last

Email \*

Address \*

Street Address

Address Line 2

City

State / Province / Region

ZIP / Postal Code

Country

Which crossbow model are you returning? \*

☐ 2017 PSE Fang XT

☐ 2017 PSE Fang LT

☐ 2017 PSE Thrive

What is the Serial # of your Crossbow? \*

Estimated Date of Purchase for your Crossbow: \*



Where did you purchase your crossbow? \*

Submit

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VERIFICATION

I, \_\_\_\_\_, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Civil Action Complaint are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

Dyann A. McElroy *DM*